

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 KATHLEEN B.Y. LAM
Deputy Attorney General
4 State Bar No. 95379
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2091
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2010 - 480

12 **SHARI LORRAINE KELLER, also known**
13 **as SHARI LORRAINE KELLER**
BAUTISTA
14 **3460 Marron Road, #103-102**
Oceanside, CA 92056

A C C U S A T I O N

15
16 **Registered Nurse License No. 528177**

17 **Respondent.**

18
19 **Complainant alleges:**

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about December 3, 1996, the Board of Registered Nursing issued Registered
25 Nurse License Number 528177 to Shari Lorraine Keller, a.k.a. Shari Lorraine Keller Bautista
26 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
27 the charges brought herein, and will expire on April 30, 2010, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the
6 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
7 jurisdiction to proceed with a disciplinary action during the period within which the license may
8 be renewed, restored, reissued or reinstated.

9 5. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an
10 expired license at any time within eight years after the expiration.

11 STATUTORY JURISDICTION

12 6. Section 475 of the Code states, in pertinent part:

13 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
14 govern the denial of licenses on the grounds of:

15 " "

16 "(2) Conviction of a crime.

17 " "

18 "(4) Commission of any act which, if done by a licensee of the business or
19 profession in question, would be grounds for suspension or revocation of license.

20 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall
21 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
22 of subdivision (a) .

23 " "

24 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

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1 8. Section 493 of the Code states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
12 'registration.'"

13 9. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
14 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
15 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
16 Nursing Practice Act.

17 10. Section 2761 of the Code states, in pertinent part:

18 "The board may take disciplinary action against a certified or licensed nurse or deny an
19 application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

21 " "

22 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
24 Act] or regulations adopted pursuant to it.

25 " "

26 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
27 functions, and duties of a registered nurse, in which event the record of the conviction shall be
28 conclusive evidence thereof.

1 "...."

2 11. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
3 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
4 licensee or to render a decision imposing discipline on the license.

5 12. Penal Code section 11160, subdivision (d), states, in pertinent part:

6 "For the purposes of this section, 'assaultive or abusive conduct' shall include any of the
7 following offenses:

8 "...."

9 "(13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means
10 likely to produce great bodily injury, in violation of Section 245.

11 "...."

12 COSTS

13 13. Section 125.3 of the Code provides, in pertinent part, that the
14 Board/Registrar/Director may request the administrative law judge to direct a licensee found to
15 have committed a violation or violations of the licensing act to pay a sum not to exceed the
16 reasonable costs of the investigation and enforcement of the case.

17 REGULATIONS

18 14. California Code of Regulations, title 16, section 1444, states, in pertinent part:

19 "A conviction or act shall be considered to be substantially related to the qualifications,
20 functions or duties of a registered nurse if to a substantial degree it evidences the present or
21 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
22 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

23 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
24 subdivision (d) of Penal Code Section 11160.

25 "...."

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1 15. California Code of Regulations, title 16, section 1445, states:

2 "(a) When considering the denial of a license under Section 480 of the code, the
3 board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license
4 will consider the following criteria:

5 "(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for
6 denial.

7 "(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
8 consideration as grounds for denial which also could be considered as grounds for denial under
9 Section 480 of the code.

10 "(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in
11 subdivision (1) or (2):

12 "(4) The extent to which the applicant has complied with any terms of parole, probation,
13 restitution, or any other sanctions lawfully imposed against the applicant.

14 "(5) Evidence, if any, of rehabilitation submitted by the applicant. (b) When considering
15 the suspension or revocation of a license on the grounds that a registered nurse has been
16 convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her
17 eligibility for a license will consider the following criteria:

18 "(1) Nature and severity of the act(s) or offense(s).

19 "(2) Total criminal record.

20 "(3) The time that has elapsed since commission of the act(s) or offense(s).

21 "(4) Whether the licensee has complied with any terms of parole, probation,
22 restitution or any other sanctions lawfully imposed against the licensee.

23 "(5) If applicable, evidence of expungement proceedings pursuant to Section
24 1203.4 of the Penal Code.

25 "(6) Evidence, if any, of rehabilitation submitted by the licensee."

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FIRST CAUSE FOR DISCIPLINE

(March 11, 2009, Criminal Conviction – Assault with a Firearm on February 11, 2007)

16. Respondent is subject to disciplinary action under sections 475(a)(2), 490, and 2761(f) in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

17. On or about March 11, 2009, in *People of the State of California v. Shari Lorraine Keller Bautista*, Respondent was found guilty by a jury of (i) assault with a firearm – Penal Code section 245(a)(2) – Ct. 1 (use of firearm enhancement found true pursuant to Penal Code section 12022.5(a)); (ii) making criminal threats – Penal Code section 422 – Ct. 2 (use of firearm enhancement found true pursuant to Penal Code section 12022.5(a)); (iii) battery against cohabitant – Ct. 3 (found guilty of lesser-included offense); and (iv) child abuse and endangerment – Ct. 4 (use of firearm enhancement found true pursuant to Penal Code section 12022.5(a)).

18. On May 8, 2009, sentencing was continued pursuant to Penal Code section 1203.03, in order to allow a mental health evaluation to be conducted on Respondent. On December 18, 2009, Respondent was sentenced to five (5) years probation, ordered to serve 365 days in jail and to pay a \$300 fine. Respondent's probation ends on December 17, 2014.

19. The circumstances of the conviction are as follows: On February 11, 2007, Orange County Sheriff's Departments officers responded to a call of a physical fight between a wife and her husband. A gun was used during the altercation. When officers arrived, they contacted Respondent and her husband. Respondent was with her one-year-old son. Respondent's husband told the police officers that he and his wife (Respondent) were involved in an argument over housekeeping and childcare. Respondent was very upset and indicated she was going to leave her husband. Respondent's husband took their son upstairs to the master bedroom and locked the door.

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1 20. Respondent forced the bedroom door open, and jumped on the bed and attacked her
2 husband. Respondent grabbed her husband's ears and hair, and scratched his neck and face.
3 Respondent then left the bedroom, returning with a loaded handgun. While holding the gun,
4 Respondent said "I'll fucking kill you! Give me the kid!" Respondent's husband complied with
5 Respondent's demand, and handed their son to his wife. As Respondent reached for their son, her
6 husband grabbed the gun from his wife. Respondent left with their son, and her husband called
7 the Sheriff's Department.

8 21. When the officers spoke with Respondent, she stated that she grabbed her husband's
9 ears and brandished the gun because he would not give her their son. She was arrested and taken
10 into custody. Respondent stated that she did not know that the gun was loaded.

11 SECOND CAUSE FOR DISCIPLINE

12 (Commission of Act Which Are Grounds for Discipline)

13 22. Respondent is subject to disciplinary action under section 475(a)(4), in that she
14 committed acts which, if done by a licensee, constitute grounds for discipline, as described in
15 paragraphs 16 through 21, above.

16 THIRD CAUSE OF DISCIPLINE

17 (Violation of Board's Statutes & Regulations)

18 23. Respondent is subject to disciplinary action under section 2761(d) in that she violated
19 provisions of the Nursing Practice Act or Board regulations, as described in paragraphs 16
20 through 21, above.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 528177, issued to Shari
25 Lorraine Keller Shari Lorraine Keller.

26 2. Ordering Shari Lorraine Keller to pay the Board of Registered Nursing the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 3/29/10

Louise R. Bailey

LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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